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M.FITTIPALDI

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SUBJECT: FOREIGN GRANTS BILL AND USG PROGRAMS

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¶1. (SBU) Summary: Some of our official contacts - most notably a handful of judges - are concerned that their participation in USG-funded programs could contravene Russian law. Many USG-financed technical assistance programs, from those of USAID and IMET to Open World and INL, provide funds and per diem to Russian officials for in-country and foreign travel. A series of amendments, promulgated in March, prohibit a broad range of officials from receiving financing exclusively from foreign sources for "pedagogical, scientific, or creative activities." The prohibition does not apply if there is an international agreement covering the activity or if a Russian source is participating in financing.

¶2. (SBU) The intent of the law was to prohibit outside income and, to date, only one USG-funded program (a St. Petersburg International Visitor Program in which Interior Ministry officials refused to participate) has been directly affected by this law, and we continue to assert that existing bilateral agreements - from the 1992 bilateral agreement on technical assistance to the 2006 MOU on university partnerships - provide the necessary legal cover for participants, despite the fact that these agreements are not international agreements ratified by the Russian legislature.
End Summary.

The Legislation

¶3. (U) GOR laws generally prohibit GOR officials from earning income for activities considered outside of their official duties. There are certain exceptions to this, including for those deemed "pedagogical, scientific, or creative activities." The law promulgated in March is a series of amendments to existing legislation that prohibits GOR officials from being exclusively financed by foreign sources for such "pedagogical, scientific, or creative activities," except as otherwise provided by RF legislation, RF international agreements, or bilateral agreements between federal bodies of power and foreign government bodies or international or foreign organizations. Similarly, GOR officials are prohibited from serving in governing, supervisory, or fiduciary capacities for foreign NGOs.

¶4. (U) The legislation applies to a broad range of government officials. Insofar as legislative intent goes, Duma Speaker

Boris Gryzlov said that "if a Russian citizen gives money to a government employee, it's a bribe; if a foreigner does, it's a grant." While grants, honoraria, etc. will be forbidden, further ramifications of this legislation are unclear. Some GOR officials are concerned, however, that the airfare, lodging, and other expenses they receive might be considered "outside income" under the law.

The Effects

15. (SBU) The legislation affects eighteen other pieces of legislation covering various branches of government. More confusing, each piece of legislation is amended in subtly different ways, resulting in a lack of uniformity. Even existing legislation prohibits many government officials from earning a "second salary," the definition of which could be interpreted broadly enough to include USG programs.

16. (SBU) The law has led to concern among some of our official contacts in the judiciary and law enforcement. Participants in a USAID "judicial exchange" program with the Arbitration Court cited the law and expressed concern that the program would contravene it, although an internal court resolution seems to have paved the way for future programs to go forward. The only USG program affected to date has been an International Visitor Program (IVP) in St. Petersburg for law enforcement officials. St. Petersburg was unable to find participants for a "hate crime" IVP when the Ministry of the Interior, citing this law, refused to cooperate with the NGO with which the Consulate was working. Other USG-funded programs, including those run by NDI and IRI, have been unaffected.

17. (SBU) The experience of European-funded technical assistance programs has mirrored our own. Although initially

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concerned that their heavily GOR-weighted TACIS programs would be seriously and negatively affected, our European colleagues have not seen an impact. It was only in their judicial programs, much like USAID, that there was initial reluctance to participate, which has now been overcome.

18. (SBU) The Embassy continues to assert that the 1992 bilateral agreement on technical assistance and the many bilateral Memoranda of Understanding (MOU) between agencies provide the necessary legal cover under the amendments' exception clause. The annual INL and IMET workplans and the 2006 MOU on university partnerships are but a few examples. We note, however, that none of these agreements would qualify as an international agreement ratified by the Russian legislature.

19. (SBU) United Russia Duma Deputy Aleksandr Moskalets expressed surprise that the Embassy was concerned about the law, saying that it should have minimal effect on USG programs. His assumption tracked with ours: that the various Memoranda of Understanding between the Embassy and the GOR fit into the exception clause. Moskalets cautioned, however, that such memoranda would only apply to federal level agreements.

Comment

110. (SBU) The intent of the law was likely to prevent "opposition" political actors from being financed by foreigners. The practical effects of this law on USG programs have been nil, with the St. Petersburg exception cited above. The U.S. Mission has conducted an internal assessment and concluded, like our EU colleagues, that we will continue to maintain that we have sufficient legal cover

to conduct our programs and to deal with questions and concerns on a case-by-case basis. At the same time, we will continue efforts to brief the Russian Government about our programs in an open and transparent manner.

BURNS